

CLARA HOLLOWAY SAMPSON

IBLA 84-47 Decided June 10, 1985

Appeal from decision issued by the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void, and millsite claim null and void ab initio. N MC 213912 through N MC 213916.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2-1(b)(1), in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Millsites: Generally -- Mining Claims: Lands Subject to -- Withdrawn Land

A millsite claim located on land which has been segregated from mineral location is properly declared null and void ab initio.

APPEARANCES: Clara Holloway Sampson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

On September 19, 1983, the Nevada State Office, Bureau of Land Management (BLM), issued two decisions to Clara Holloway Sampson. 1/ One decision declared the Lost Cabin Millsite Claim N MC 213916 located in NW 1/4, sec. 36, T. 21 S., R. 56 E., Mount Diablo Meridian, null and void ab initio because it

1/ Copies of the decisions issued to co-locator J. J. Stone were unclaimed, and returned to BLM by the Postal Service.

was located on land segregated from location and entry under the general mining laws "by virtue of the authority and direction contained in section 4 of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986)." The second decision declared the Barite #1 through #4 mining claims N MC 213912 through N MC 213915 abandoned and void for failure to file notices of intention to hold the claims or proof of labor in 1982.

The BLM case file contains a copy of a BLM Form 1541, captioned "Short Note Transmittal," dated October 11, 1983, directed to appellant referencing the millsite claim, and advising her that the part of the classification affecting this claim would be vacated on October 31, 1983, at 9 a.m., at which time she could relocate the claim. This letter was returned to BLM by the Postal Service.

Appellant filed a notice of appeal on October 17, 1983, which stated the following grounds for appeal:

The area in question has been closed for mining claim location as of July 7, 1967 and has also been closed to Desert Land Entry Filings and Desert Land Entries are being accepted but filings on mining claims are not being accepted. Therefore, this decision on (Lost Cabin Millsite, Barite #1-4) is not in accordance with equal treatment of claimants and therefore is incorrect.

It is, therefore, apparently Clara Sampson's intention to appeal only from the decision declaring her millsite claim void, since she does not address the invalidation of her other four claims.

[1] Appellant's mining claims were located on July 10, 1981, and recorded September 8, 1983, with BLM. Under section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1982), and implementing regulations, 43 CFR 3833.2-1(b)(1), the owner of an unpatented mining claim located after October 21, 1976, is required to file with BLM evidence of annual assessment work performed on the claim, or a notice of intention to hold the mining claim prior to December 31, of each year following the calendar year in which the claim is located. Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), and 43 CFR 3833.4(a). As the claims were located and recorded in 1981, one or the other document had to be filed for each claim prior to December 31 of 1982, the year following the calendar year in which the claims were located. When appellant failed to file either document in 1982, BLM properly held the four affected claims to have been abandoned and void. See United States v. Locke, __ U.S. __, 105 S. Ct. 1785 (1985); Randel Angeloni, 54 IBLA 56 (1981).

[2] Additionally, the BLM decision dealing with the millsite claim finds it void because it is situated on land closed to entry under the general mining law. A Notice of Classification dated June 27, 1967, specifically segregated certain lands including T. 21 S., R. 56 E., wherein the millsite claim was located, from appropriation under the general mining laws. 30 FR 9995 (July 7, 1967). A millsite claim located on land closed to entry under

the general mining law is null and void ab initio. See Howard J. Hunt, 80 IBLA 396 (1984). While the 1967 classification order segregated that land from entry under the general mining laws, it did not segregate the land from other forms of entry, contrary to appellant's contention in this regard. See 30 FR 9995 (1967). The decision appealed from recites that this classification is to be vacated in the near future. Assuming this action occurred October 31, 1983, as stated in the October 11, 1983, BLM memorandum, appellant may wish to contact BLM concerning relocation of her millsite claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

